

## Message Text

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L/PM TABOTEK

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TO AMEMBASSY QUITO

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E.O. 11652: N/A

TAGS: CASC, MARR, PFOR, EC

SUBJECT: PROBLEM REGARDING US SERVICEMEN IN ECUADOR

REF: QUITO 5242

1. THE PERSONS DESCRIBED IN REFTTEL FALL INTO TWO BROAD CLASSES UNDER THE US NATIONALITY LAWS, PERMANENT RESIDENT ALIENS AND CITIZENS, AND FACE LEGAL PROBLEMS PECULIAR TO EACH WHICH ARE BRIEFLY DESCRIBED BELOW. THEIR MAJOR DIFFICULTY ARISES FROM ACTIONS THAT THEY TOOK WHILE ALL WERE CITIZENS OF ECUADOR AND SUBJECT TO THAT NATION'S DRAFT. IN THAT RESPECT THEIR CURRENT LEGAL POSITIONS ARE EQUALLY VULNERABLE DESPITE TWO MINOR DIFFERENCES THAT MUST BE OBSERVED.

2. FIRST, THE USG MAY NOT APPROPRIATELY OFFER FORMAL DIPLOMATIC PROTECTION TO THE MAJORITY OF THESE TEMPORARY VISITORS. UNDER RECOGNIZED INTERNATIONAL LEGAL USAGE STATES ORDINARILY REFRAIN FROM OFFICIAL INTERVENTIONS ON LIMITED OFFICIAL USE

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BEHALF OF THEIR OWN NATIONALS AGAINST OTHER STATES ALSO

CLAIMING SUCH PERSONS AS NATIONALS SO LONG AS THE INDIVIDUALS INVOLVED HAVE VOLUNTARILY SUBMITTED TO THE TERRITORIAL JURISDICTION OF THE SECOND COUNTRY. HERE, MOST OF THE COMPLAINANTS ARE IN FACT RETURNING TO THEIR ONLY COUNTRY OF CITIZENSHIP; THE SOLE GROUND FOR USG INTER-CESSION IS THAT THOSE WHO ARE AMERICAN CITIZENS CAN NO LONGER BE CONSIDERED ECUADOREAN CITIZENS (UNDER ARTICLE 253

OF THE ECUADOREAN CONSTITUTION).

3. ANY AMERICAN CITIZENS AMONG THE GROUP MAY ULTIMATELY BE EXPOSING THEMSELVES TO A SIGNIFICANT RISK OF LOSS OF US CITIZENSHIP UNDER 8 USC 1481 (NOTWITHSTANDING AN OPINION OF THE ATTORNEY GENERAL DISTINGUISHING FOR SUCH PURPOSES VOLUNTARY SERVICE IN THE ARMED FORCES OF MILITARILY "ALLIED," AS OPPOSED TO "HOSTILE," COUNTRIES). BY CONTRAST, RESIDENT ALIENS WHO ACTIVELY VOLUNTEER WOULD NOT JEOPARDIZE THEIR RIGHT TO RETURN TO THE UNITED STATES PROVIDED THAT THEIR SOJOURN ABROAD WAS OF LESS THAN ONE YEAR'S DURATION, THEY NEVER ABANDONED THEIR PERMANENT US RESIDENCE, AND (PRESUMABLY) ECUADOR REMAINED "ASSOCIATED WITH THE UNITED STATES IN MUTUAL DEFENSE ACTIVITIES." THE ECUADOREAN MILITARY IS APPARENTLY NOT NOW CONSCRIPTING ANY TEMPORARY VISITORS, BUT A RISK REMAINS FOR THE SMALL MINORITY OF NATIVE ECUADOREANS WHO ARE AT PRESENT AMERICAN CITIZENS.

4. OF GREATER IMMEDIATE RELEVANCE TO THE QUESTIONS RAISED IN REFTTEL, HOWEVER, IS THE FACT THAT ALL OF THE RETURNING VISITORS WOULD APPEAR TO BE POORLY SITUATED TO PROTEST THE IMPOSITION OR COLLECTION OF FINES, SINCE THEY ARE NOW MERELY BEING REQUIRED TO PAY THE PENALTY FOR PREVIOUSLY COMMITTED VIOLATIONS. GIVEN THE PRIMA FACIE VALIDITY OF EXTRATERRITORIAL APPLICATION OF NATIONS' DRAFT LAWS TO THEIR OWN CITIZENS (AS HAS BEEN CONFIRMED BY THE US SUPREME COURT) THE ECUADOREAN GOVERNMENT'S ACTIONS, APART FROM POSSIBLE DISCRIMINATION OR OTHER VIOLATIONS OF DUE PROCESS, ARE NOT SUBJECT TO CHALLENGE. ECUADOR DEMANDS THAT ALL MALE CITIZENS REGISTER WITH THEIR LOCAL CONSUL ON THE OCCASION OF THEIR EIGHTEENTH BIRTHDAY, WHEREVER LIMITED OFFICIAL USE

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THEY MAY BE IN THE WORLD, AND THAT THEY RETURN ON OR BEFORE THEIR 21ST BIRTHDAY FOR A PERIOD OF ACTIVE MILITARY DUTY. IF ECUADOREAN CITIZENS IGNORE SUCH OBLIGATIONS, EVEN IF THEY SUBSEQUENTLY OBTAIN NATURALIZATION AS US CITIZENS, THEY CAN HARDLY EXPECT TO REVISIT THEIR NATIVE COUNTRY WITH IMPUNITY.

5. THE RECIPROCAL ARMED FORCES AGREEMENTS ALLUDED TO

IN REFTEL ARE INAPPLICABLE IN CIRCUMSTANCES WHERE THE SUBJECT OF THE OTHERWISE CONFLICTING MILITARY OBLIGATIONS HAS ALREADY VIOLATED THE CONTROLLING REGULATIONS OF HIS ORIGINAL STATE OF CITIZENSHIP AT THE TIME THAT HE ENLISTS OR IS DRAFTED INTO THE ARMED SERVICES OF ANOTHER COUNTRY. THE UNITED STATES AND ECUADOR ARE NOT IN FACT PARTY TO ANY MUTUALLY BINDING RECIPROCAL ARRANGEMENTS OF THIS OR ANY RELATED KIND. (FURTHERMORE, THE PRINCIPAL CONVENTIONS ON

THE SUBJECT DEAL WITH DUAL NATIONALS, AN IMPOSSIBILITY UNDER THE ECUADOREAN CONSTITUTION.) THE ONLY RECIPROCITY ARRANGEMENT THAT EXISTS BETWEEN ECUADOR AND THE US PERTAINS TO ALIEN PERMANENT-RESIDENTS IN THAT COUNTRY WHICH IS SEEKING TO REGISTER OR DRAFT SAME, AND IT CONSTITUTES NO MORE THAN A VOLUNTARY UNDERTAKING BY EACH STATE TO LIMIT ITS DRAFT IN ACCORDANCE WITH IDENTICAL SELF-IMPOSED LIMITATIONS BY THE OTHER. THE ECUADOREAN CITIZENS WHO ARE THE SUBJECT OF YOUR QUERIES ARE NEITHER ALIENS IN THEIR LAND OF ORIGIN NOR ACTUAL OR ASPIRING PERMANENT RESIDENTS THEREIN.

6. SINCE THE SITUATION IN ECUADOR IS SIMPLY ONE OF APPLICATION OF SANCTIONS PREVIOUSLY AUTHORIZED BY LAW, WE DO NOT BELIEVE THAT AN ORDINARY STATUS OF FORCES AGREEMENT WOULD RESOLVE THE ISSUE. AGREEMENTS OF THIS SORT, WHICH TYPICALLY ADDRESS THE DILEMMA OF OBLIGATORY MILITARY SERVICE OF DUAL NATIONALS, ARE RARELY RETROACTIVE IN EFFECT, AND THERE IS, TO REPEAT, NO POSSIBILITY OF DUAL CITIZENSHIP BETWEEN ECUADOR AND THE UNITED STATES (BEYOND THE AGE OF EIGHTEEN YEARS). PERHAPS FUTURE DIFFICULTIES COULD BE AVOIDED IF A SPECIAL BILATERAL ARRANGEMENT WERE DEVISED WHEREBY ECUADOR AND THE US PROMISED TO EXEMPT FROM CONSCRIPTION EACH NATION'S OWN LIMITED OFFICIAL USE

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CITIZENS WHO, WHILE RESIDENT IN THE OTHER NATION ON A LEGITIMATE PERMANENT BASIS, SERVE IN ITS MILITARY, SAID EXEMPTION TO BE CONDITIONED UPON COMPLIANCE WITH DRAFT REGISTRATION REQUIREMENTS AND UPON THE ABSENCE OF A DECLARED NATIONAL EMERGENCY (EXCEPT FOR THOSE CITIZENS OUTSIDE OF THE ENDANGERED COUNTRY WHO ARE THEN IN AN ACTIVE DUTY STATUS, AS TO WHOM THEIR COUNTRY OF CITIZENSHIP'S EMERGENCY NEED HAVE NO IMMEDIATE EFFECT).

7. ANOTHER ALTERNATIVE MIGHT LIE IN VERY INFORMAL APPROACHES TO APPROPRIATE GOE OFFICIALS INDICATING USG AWARENESS BOTH OF PROBLEM AND OF IMPROPRIETY FORMAL DIPLOMATIC REPRESENTATIONS ON BEHALF OF PERSONS AFFECTED. YOU WOULD SEEK VIEWS AND SUGGESTIONS OF GOE AS TO HOW DIFFICULTY MIGHT BE RESOLVED, NOTING DIFFICULT POSITION

INTO WHICH FORMER SERVICEMEN WHO RETURN ARE PUT AND FACT  
THAT USG ALSO HAS DIRECT INTEREST IN WELL-BEING AND  
CONTINUED AVAILABILITY OF ACTIVE US SERVICEMEN EVEN IF NOT  
US CITIZENS. OBJECTIVE WOULD BE MITIGATION OF IMPACT OF  
ECUADOREAN LAW THROUGH A TACIT ADMINISTRATIVE ACCOMMODATION  
BY GOE; IN INTEREST OF ALL CONCERNED GOE WOULD SIMPLY  
REFRAIN FROM PROSECUTING, DEFER PROSECUTION UNTIL A SET  
DATE IN THE FUTURE, OR, BOTH SUGGESTIONS FAILING, AT LEAST  
TREAT THOSE HEREAFTER CONVICTED LENIENTLY. HOWEVER THE

GOE SHOULD DECIDE TO PROCEED, WE WOULD WISH TO AVOID  
CONVEYING ANY IMPLICATION THAT THE USG REGARDS APPLICATION  
OF ECUADOREAN LAW AS UNJUST. INGERSOLL

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